Court No. 2

In the High Court of Uttaranchal at Nainital.

A.O. No. 210 of 2002

Smt. Pushpa Kandari
Wife of late Madho Singh Kandari,
Bindu Khatta, Lal Kuan, District-Nainital.
.....Claimant/Appellant

Versus

1. Shri Bhupendra Singh S/o Late G.S. Bisht,
   Resident of Bhuraj Bhawan,
   Kathgodam, District-Nainital.
2. New India Insurance Company,
   Branch Haldwani, District-Nainital
   Through its Regional Manger.

.....Opp. parties/Respondents

Sri P.C. Kandpal, learned counsel for the appellant.

Dated: 23rd Aug., 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the claimant/appellant against the judgment and order dated 02.8.2002 passed by Motor Accident Claims Tribunal /District Judge, Nainital in Motor Accident Claim case No. 50 of 2001

2- Brief facts giving rise to this appeal are that on 05.03.1997 at about 7.45 p.m. when Madho Singh Kandari-husband of the claimant was on his way to Lal Kuan on the road and walking on his left side, all of a sudden truck bearing registration No. USY 3625 coming from the same side crushed him. Due to the injuries received in the accident Madho Singh Kandari died on the spot. He was 35 years of age at the time of accident and

Was earning Rs. 6000/- per month by running a restaurant at Nagla Lal Kuan. The truck involved in the accident was being driven rashly and negligently. An F.I.R. was lodged of the accident with the police initially against the driver of the unknown truck but after 3-4 days when eye witnesses Khima Nand Dani disclosed the truck number, the police was informed accordingly but no action was taken by the police. Ultimately, a written report was sent on 19.08.1999 by registered post to S.S.P. Nainital but even then no inquiry was made against the driver of truck bearing registration No. USY 3625. The claimant filed the claim petition for compensation to the tune of Rs. 4,50,000/- on account of loss of financial assistance, Rs. 50,000/- on account of mental agony and Rs. 25,000/- towards the funeral expenses due to the death of her husband.

3- The opposite parties contested the case by filing their separate written statements denying all the allegations. The insurance of the vehicle in question has not been denied by the Insurance Company. The learned Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence of the parties rejected the claim petition of the claimant. Feeling aggrieved, the claimant has come up in this appeal .

4- The learned counsel for the appellant challenge the impugned order of the learned Tribunal on the grounds, inter alia, that the Claims Tribunal was wrong in holding that the accident was not taken place by the vehicle of respondent No. 1 and that the Claims Tribunal did not consider the evidence of the eye witness of the accident in a correct perspective manner.

5- We have gone through the entire material on record and find that the learned Tribunal has framed issue regarding rash and negligent driving of the driver of

Offending truck and gave its finding that the accident causing the death of deceased has not taken place due to rash and negligent driving of the driver of the vehicle in question. It was further held by the learned Tribunal that the vehicle in question was insured with the New India Assurance Company at the time of accident.

6- The learned Tribunal has given its finding that the accident has taken place causing the death of deceased due to rash and negligent driving of the driver of offending truck on the aforesaid date time and place is not proved. The Tribunal has rightly appreciated the evidence adduced by the parties and we find that there is no error in holding that the claimant is not entitled for any compensation. Nothing has been shown to us on behalf of the claimant-appellant so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

7- Accordingly, the appeal has no merit and is hereby dismissed.

(B.S. Verma, J.) **(P.C.Verma, J.)**

P.Singh